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A Strategy Assessment of Legal Systems Development In Sri Lanka

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This Working Paper is one of a number of case studies prepared for CDIE's assessment of USAID Legal Systems Development programs. As an interim report, it provides the data from which the assessment synthesis is drawn. Working Papers are not formally published and distributed, but interested readers can obtain a copy from the DISC.

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EXECUTIVE SUMMARY

In the latter part of the 1993, CDIE undertook a strategic assessment of A.I.D. and Asia Foundation rule of law (ROL) programs in Sri Lanka. The assessment is part of a six country study designed to identify lessons and provide guidance in future ROL programming. Sri Lanka was one of the countries included in the study because of longstanding TAF and more recent A.I.D. investments in a range of legal development activities including law curricula development, legal aid, mediation, the development of the Sri Lankan Bar Association, and the training of judges.

A range of insights can be drawn from the Sri Lanka case which would seem to have broader implications for the design of donor ROL strategies. First, the new mediation program underway in Sri Lanka, which is staffed by volunteers, would seem to demonstrate that there is a spirit of public service in some societies which can be drawn on to make dispute resolution services more accessible to the populace.

A second conclusion from the Sri Lanka experience is that legal aid, which is underfunded, is relatively inexpensive service to provide to the poor. In this regard, there is a need for innovation in making legal aid more accessible to the poor, particularly for women.

A third insight concerns the difficulties of building constituencies which would pressure governments to undertake reforms in increasing access to legal services and improving judicial efficiency and effectiveness. In Sri Lanka some members of the Bar are reformist in orientation, but it is unclear to what extent the Bar, as an organization can serve the cause of reform. Other candidate constituencies remain weak and divided. Larger commercial firms are generally indifferent to reform, the media operates under severe restrictions and the NGO community is constrained by its small size and the debilitating effects of chronic social strife over the past decade.

Despite the above mentioned constraints in the generation of organized constitutencies and coalitions, the Sri Lanka case suggests that donor support for individual elites can make a difference in pressuring for reform or creating a climate favorable to reform. Thus, the recent introduction of the national mediation program was taken at the behest of higher officials within the judicial system. In addition, the improvements in curricula reforms underway at several universities are being pioneered by several members of the faculty.

A more generic question concerning the prospects for reform is whether donor supported improvements in law faculties and the new training initiatives sponsored by the Bar to improve the skills of practicing lawyers can result in a more efficient and effective

judicial system. At the margins it probably will, but significant improvements in the legal system may have to await the emergence of more vigorous reformist constituencies, the development of a less encumbered media, and the conduct of systematic research on problems which constrain judicial performance.

PREFACE

In late 1993, the authors of this paper spent one month in Sri Lanka undertaking a study of Asia Foundation (TAF) and A.I.D. investments in legal and judicial development. The study is part of a six country assessment undertaken by the Center for Development Information and Evaluation (CDIE) of A.I.D. and other donor support of rule of law (ROL) programs. The other countries include Colombia, Uruguay, Argentina, Philippines and Honduras.

The objective of the six country assessment is to draw lessons from the existing base of experience with donor supported ROL efforts in order to improve the design and conduct of future programs in this area. In this context, Sri Lanka was chosen as one of the case studies because TAF has a longstanding program in the country which along with recent A.I.D. investments, provides a rich laboratory of ROL experience.

During their one month stay in Sri Lanka, the team interviewed over 150 individuals. These persons represented a cross-section of the legal system, with some functioning as judges, clerks, lawyers, and others as NGO leaders, legal aid volunteers, mediation board members, government administrators, and law school deans, faculty and students. In addition, the team conducted several focus groups as well as surveys of primary and secondary data sources.

The intent of the interviews was to acquire a greater understanding of the impact of the ROL programs supported by TAF and A.I.D., and to acquire a broader knowledge of the major issues involved in facilitating and sustaining a process of reform in a complex political and social setting. In this sense the study is less a standard evaluation on the efficacy and appropriateness of what is being undertaken by A.I.D. and TAF, and more of an examination of some of the larger insights and issues which can be gleaned from the Sri Lankan experience. A separate synthesis paper which draws together the insights of from all six countries has been completed and is available upon request from CDIE (Blair and Hansen, 1994). Separate reports along with this report on the individual countries are also available from CDIE.

The team would like to express their appreciation to all of the people whose cooperation and assistance were essential to the conduct of the Sri Lanka assessment. In particular, the Colombo staff of the Asia Foundation are gratefully acknowledged for their assistance in every aspect of the endeavor; running the gamut from their intellectual edification of the team on the dynamics of ROL reform, to arranging interviews, and to the less glamorous nit and grit of logistical support.

In the end, in spite of all the sufficient conditions supplied by TAF, it was necessary to have the cooperation of the Sri Lankans; and this they gave in more than full measure. The Sri Lankan people the team encountered spoke with great candor about issues of legal reform in their country. If a culture is to be judged by its capacity to share and reach out to those who visit from afar, then Sri Lanka exemplifies these admirable characteristics at their very best. Too numerous to mention in this report, the team wishes to express its appreciation to each and everyone of the Sri Lankans who supported and assisted in this endeavor.

I. INTRODUCTION

Democracy Under Stress

For the past decade the Sri Lankan ship of state has had to navigate through the stormy seas of violent ethnic and ideological conflict. In 1983, Tamil extremists launched a terrorist campaign to establish an independent state in the north and eastern portion of the country, where Tamils are the majority population. Repeated efforts in negotiating a peaceful settlement have failed and the insurgency continues to ebb and flow, exacting a heavy cost in loss of life and property and the dislocation of thousands of inhabitants in contested areas.

In 1987, another violent campaign emerged, this time emerging from the majority Sinhala community in the southern region of the island. Inspired by Maoist utopian visions and the fervor of ethnic Sinhalese nationalism, the Peoples Liberation Front (known by their initials in Sinhalese as the JVP) sought to overthrow the Sri Lanka government and fundamentally reshape Sri Lanka society. This rebellion was put down in 1990, but again at great human cost.

The roots of these conflicts are deepseated and their impact has greatly weakened the body politic. Embattled and under siege from two directions, the government sought refuge in a number of measures which overtime have severely compromised democratic norms and practices. The Prevention of Terrorism Act, passed in 1979, and other emergency measures thereafter, have enabled the military and police to engage in widespread extralegal and extrajudicial actions in containing the Tamil rebellion and completely suppressing the JVP insurrection.

Members of the army and police were particular targets for JVP terrorism and atrocities. This rebellion ended with JVP fighters and sympathizers murdered in the thousands by vigilante and paramilitary death squads. In the north, acts of violence by Tamil rebels against the army and civilians have been met in turn with violent retribution. In both of these conflicts, thousands of civilians disappeared or have been detained for extended periods of time, and frequently subjected to torture and intimidation. While over the past several years police and military impunity have been in decline, incidents of abuse and unwarranted detention still occur.

Growing lawlessness and lack of respect for human rights and due process has had a deleterious affect on civil society in general and the political system in particular. The media is frequently subjected to censorship and individuals find it difficult to voice dissent without being viewed with suspicion or subjected to harassment by the government or its sympathizers. The insecurities associated with chronic civil strife and crisis has contributed to the growth of executive power and a relatively closed political elite at the expense of the other branches of government.

In particular, the judicial branch has seen it role and stature diminished as a guardian of individual rights and democratic practices. The Prevention of Terrorism Act and the emergency regulations have weakened both the authority of the courts to check arbitrary government actions and their role as an instrument for redress and the rendering of justice for those many victims who have been caught up in the web of violence over the past decade.[1]

While the level of violence in Sri Lanka has subsided there is growing concern in some quarters that the democratic order, weakened from years of civil conflict, remains relatively inaccessible and unresponsive to many of the populace. The former multiparty system appears to be evolving into a one party regime, with the incumbent political party holding power for the last fifteen years. The political elite is seen by many critics as relatively insular and unrepresentative and the parliament unaccountable to its constituencies. In brief, public alienation and a loss of faith in the existing order constitute a worrisome source of concern to many informed observers.

Despite all the adversities which have beset Sri Lanka over the past decade, and nagging anxieties about the future, at the time of the team's visit in July, 1993, many of those interviewed saw incipient signs of hope that the political environment was now becoming more receptive to debate and discussion on how to revitalize the country's democratic institutions and practices. Recent press reports indicate however, that these hopes may have been ill-founded and that the prospects for fundamental change remain very uncertain. It is in this context of uncertainty that TAF and A.I.D. are investing in making democracy a stronger and more integral feature of the country's future.

The Evolution A.I.D. and TAF Democracy Programs

Since opening its office in Colombo in 1953, TAF has had a long standing interest in strengthening democracy in Sri Lanka. It has provided grants to individuals and organizations, both within the public and private sector, designed to strengthen civil society and the various institutions which comprise a vital democratic order.

An examination of TAF annual reports over the past 10 years indicates that in Sri Lanka TAF has consistently given priority attention to projects in the areas of human rights, women's rights, media development and rule of law activities. Annual expenditures in these and other ancillary endeavors have ranged between $300,000 and $400,000.

[1] Recently, the Supreme Court has begun to reassert its role in addressing human rights violations, particularly for those who have been illegally held in detention.

TAF programs in Sri Lanka reflect a larger Foundation emphasis on strengthening democratic governments throughout Asia. An examination of the Foundation's most recent annual report indicates that its Asia programs are focussed on four broad themes (Asia Foundation, 1992):

- broadening the scope and mandate of elected leadership
- strengthening the performance and accountability of elected government
- making legal systems more accessible and responsive
- building the non-governmental side of democracy

The A.I.D. contribution to democracy began in the mid and latter part of the 1980s, with the A.I.D. Mission providing small 116(e) grants to various NGOs for the development of legal literacy education programs. In 1990, however, an interest in a broader range of democracy issues became evident with the initiation of the A.I.D. Asia Bureau's Democratic Pluralism Initiative (DPI). In response to this initiative the A.I.D. Sri Lanka Mission was the first country program in the Asia region to initiate an overall strategic assessment in defining program options for the democracy sector.

The strategic assessment concluded that large segments of Sri Lanka's population lacked the opportunity to voice their concerns and participate fully in the political life of the country. Based on this analysis the A.I.D. Mission adopted a strategic program goal of "broader and more effective citizen participation" as its primary program objective in the democracy sector. To achieve this objective it identified the five following program targets for investment:

- Human rights well-protected and defended by both government and citizenry;
- An independent and effective NGO community, including advocacy groups;
- Better citizen access to the legal system;
- A legal and institutional framework conducive to increased private control of productive resources; and
- Better-informed legislative and public policy decision-making, through a more independent and professional media and other means of free expression of opinion.

Mission funding for its DPI program began in FY1990 and FY1991 with three grants, totaling $787.984 to TAF to support activities in law

and justice, legislative development and constitutional reform, and the media and mass communication.

In effect, TAF become the primary agent for implementing the new DPI initiative in Sri Lanka. A.I.D. welcomed the opportunity to work with the TAF, as it is doing with DPI initiatives in several other Asian countries. With its longstanding program experience in Sri Lanka, its well-established networks within the larger political system, and its reputation for professionalism and good-judgment in dealing with host-country political sensitivities, TAF was well-positioned to assume a lead role in implementing the DPI initiative.

TAF and A.I.D. Activities in Legal Development

The DPI initiative includes a major emphasis on strengthening the Sri Lankan legal system. While TAF continues its own program funding and activities in legal development, in effect, its role in this sector became greatly expanded with its assumption as the lead actor in the A.I.D. DPI initiative.[2]

A review of recent and current TAF and A.I.D. investments in the legal sector indicates that funding has clustered around the following areas:

Legal Aid Small amounts of funding have been provided to a diverse range of organizations who are involved in the provision of free legal aid services. They include the following:

> **Legal Aid Commission (1988-1990).** This is a government operated agency under the Ministry of Justice, which provides free legal aid services to the public.
>
> **Women's Lawyers Association (1985-1990) and Women-in-Need (1990-1993).** These two NGOs are providing free legal aid to women.

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[2]TAF investments in the legal sector began at a very modest level in the early 1980s. However, a quantum leap occurred in TAF grants for the legal sector in 1988, with $220,265 in annual funding, and thereafter, annual funding levels have remained close to this level into the 1990s. In addition, the A.I.D. DPI program grant to TAF includes $241,000 in support of the legal development components of the larger democracy program. Thus, since the early 1980s, approximately $1.5 million from TAF and A.I.D. sources have been invested in the legal sector. In any one year, total TAF investments in the legal sector constitutes from one-third to one-half of the total TAF annual budget for Sri Lanka.

Sarvodaya (1985-1994). This is an NGO which focuses primarily on village socio/economic development but is also providing free legal aid.

Open University Legal Aid Clinic (1991-1992). The clinic is sponsored by the law faculty and provides free legal aid.

Alternative Dispute Resolution (1990-1994). TAF and A.I.D. funds have been invested in supporting a government program in establishing mediation boards on a national basis as an alternative to court litigation.

Court Improvement (1985-1991). TAF funds have supported the establishment and operation of a Judges Training Institute and the computerization of some aspects of the Supreme Court.

Legal Education (1985-1993). TAF and A.I.D. have provided assistance to a wide array of activities involving legal education.

University of Colombo Law Faculty (1985-1993). TAF has supported faculty development and curriculum development in the Faculty of Law.

Sri Lanka Law College (1991-1992). A small amount of TAF funding has supported the introduction of moot courts into the Law College education program.

Council for Legal Education. TAF and A.I.D. funds are supporting the development of legal textbooks for use in law education.

Sri Lanka Bar Association (1990-1994). TAF and A.I.D. are providing funds to the Bar Association program in continuing education for practicing lawyers.

Legal Literacy Small amounts of TAF funding have been provided for media promotions of legal literacy.

Open University (1988-1990). TAF funds were provided for the development of radio and video programs on legal and human rights.

University of Colombo (1988). TAF funds were provided for radio programs on legal rights.

Constitutional Reform TAF and A.I.D. funds have been provided to support greater public dialogue and input concerning issues of constitutional reform.

Law and Society Trust (1992-1993). A.I.D. has provided funds through TAF to the Trust, an NGO, to sponsor public forums on issues relating to constitutional reform.

In addition to the above activities, the TAF has given out a variety of grants for small and discrete activities which concern issues of legal development. For example, grants have been provided for observation tours to the U.S. or elsewhere for key Sri Lankan officials and scholars in the legal community. Small TAF grants have also supported the conduct of workshops and conferences, such as a conference meeting for Sri Lankan judges to discuss judicial issues in 1991.

While the TAF has invested in a wide spectrum of activities in the legal sector, from a cumulative perspective, and added together with the A.I.D. funding, it is apparent that certain areas within the legal sector have received by far the largest portion of funding. These include the Ministry of Justice mediation boards, the Bar Association continuing education program, and the law faculty and curriculum development efforts at the University of Colombo.

An Analytical Framework for Program Assessment

The analysis of the above rule of law programs is structured around an analytical framework which has evolved from the CDIE assessment of donor sponsored ROL programs in six country studies, including Sri Lanka. Briefly, the analytical framework identifies four different ROL strategies and the sequence or priority emphasis which each of these strategies might receive as determined by particular country conditions.

The four strategies are indicated in Table 1. The first strategy, **Constituency/Coalition Building**, refers to the process of mobilizing elite and/or public support for legal and judicial reform. The successful initiation and consummation of a reform agenda is dependent upon sustained political will by the host-government. Political will is both a product of elite coalitions which assign legal reform a high priority in their policy agenda and constituency groups which bring pressure to bear on elites to support and sustain reform efforts.

The second strategy, **Structural Reform**, refers to changes in the basic rules governing the judicial system, which are usually embodied in constitutional and legislative provisions. These rules define the degree to which the judicial branch can govern in an autonomous and accountable manner. Issues of budgetary control, merit appointments for judges and judicial staff, structural and procedural innovations (alternative dispute mechanisms, oral hearings, etc.) are included as part of the structural reform strategy.

The third strategy, **Access Creation**, concerns the wide array of programs, organizations and mechanisms which enable disputants to gain access to legal services. These include such efforts as legal aid programs, legal literacy campaigns, legal advocacy

Table 2. Characteristics of Rule of Law System Development Strategies

	I. CONSTITUENCY AND COALITION BUILDING	II. STRUCTURAL REFORM	III. ACCESS CREATION	IV. LEGAL SYSTEM STRENGTHENING
1. Supply or demand strategy	• Demand	• Supply	• Demand	• Supply
2. Development problem(s)	• Lack of political will to undertake judicial system reform	• Structural deficiencies beyond scope of system building	• Systemic exclusion of non-elites • Suppression of human rights (e.g., women's rights, minorities' rights)	• A justice system severely weakened by: ◊ inefficiency ◊ incompetence ◊ inadequate resources
3. Longer term objectives	• Sustainable political commitment in support of the judicial system	• A more accountable governance system	• A legal system that promotes greater social and economic equity	• A more effective legal system
4. Intermediate objectives	• Widespread public support for the judicial system	• An autonomous and more effective judicial system	• Empowerment of disadvantaged groups	• An efficient legal system
5. Shorter term objectives	• Public pressure on political leadership to undertake judicial reform	• New legislation, regulation, court procedures (rule changing) • New adjudication structures • Constitutional restructuring	• Access to legal system for: ◊ citizens against the state ◊ citizens against each other • Redress for injustices and human rights abuses	• More qualified legal personnel • Enhanced legal resources • Improved court administration
6. Program elements	• Coalition building among key elites • Support for media: ◊ judicial reporting ◊ investigative journalism • Support for NGOs: ◊ mobilize constituencies for change ◊ lobbying ◊ affect public opinion • Anticorruption efforts • Responsible lawyers' community	• Autonomous judicial budget • Restructured judicial review • New judicial processes (e.g., oral procedures, criminal procedure codes) • ADR mechanisms • Constitutional reform • Establish career service(s)	• NGO advocacy for disadvantaged • Paralegal training • ADR • Developmental legal assistance • Litigation aid • Media monitoring • Legal literacy	• Professionalization of courts, police, prosecutors • Human rights/ethics training • Court modernization • Increased court budgets • Law school curricula, training for judges and lawyers • Supervision of lower courts • Legal think tanks
7. Performance indicators	• Elite dialogue and common agenda emerging on judicial reform • Public opinion polls favoring legal system reform • Public attention to corruption • NGO advocacy and reformist coalitions emerging	• New institutional rules improving justice system effectiveness • ADR mechanisms functioning effectively • Constitutional changes positively affecting legal system	• Justice system more responsive and accountable to disadvantaged groups • Decreased abuses • Greater equity for disadvantaged • NGO recruitment into government	• Improved case processing • Better investigation/prosecution • Enhanced legal education • Greater probity and standards • Enhanced legitimacy (surveys) • Advances in legal knowledge
8. Problems and issues	• Flagging constituent support • Competition fragmenting coalitions for change	• Reforms insufficient to transform judiciary • Reforms constrained by: ◊ limited political will ◊ weak constituencies	• Sustainability (resources and operations) • Fragmented constituencies • Elite opposition • Limited coverage and replicability	• Manipulation by dominant elites • Inadequate elite support • Little cultural resonance for reform • Opposition from vested interests • Pervasive corruption • System building insufficient; stronger measures needed
9. Prominent examples	• Argentina, Colombia, Philippines	• Colombia	• Philippines, Sri Lanka	• Colombia, Honduras, Uruguay

Note: ADR = alternative dispute resolution.

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organizations, ADR (alternative dispute resolution) mechanisms, and paralegal services.

The fourth strategy, **Legal System Strengthening**, refers to those efforts designed to enhance the institutional capacities of the legal system. Under this strategic category are programs which seek to improve court administration (budget and personnel systems, case tracking, etc.), pre and post entry training for lawyers, court staff and judges, and reforms of law school curricula.

It should be noted, as indicated in the first row of Table 1, that Constituency/Coalition Building and the Access Creation strategies refer to activities which facilitate a demand for reform, whereas the other two strategies, Structural Reform and Legal system strengthening, are more concerned with the supply-side of legal services. This is an important distinction, because many donor activities have have related to the latter strategies, whereas demand-side donor investments, which relate more to the political aspects of the reform process, are a relatively new feature of donor practices and experience.

The analytical framework, which embodies the four strategies, has proven to be a helpful tool for sorting out donor programs and assessing their contributions to the larger process of legal development. For this reason, the following chapters are structured around the framework, with each of the strategies discussed in a separate chapter. Table 2 provides a framework overview of the various activities which TAF and A.I.D. are supporting in Sri Lanka, the analysis of which will be featured in each of the following sections.

Table 2
Sri Lanka
TAF and A.I.D. Rule of Law Activities

Constituency/ Coalition Building	Structural Reform	Access Creation	Legal System Strengthening
• Law and Society Trust • Un. of Colombo-Center for Legislative Information • Bar Assoc.	•Mediation Boards	• Legal Aid Commission • Women's Lawyers Assoc. • Sarvodaya • Open Un. Legal Aid	• Judges' Training Inst. • Un. of Colombo Law Faculty • Open Un. Law Faculty • Sri Lanka Law College • Council for Legal Ed. • Supreme Court Computers

II. CONSTITUENCY/COALITION BUILDING STRATEGIES

Both TAF and A.I.D. are supporting a range of constituencies and coalition forming activities which bear, directly and indirectly, on the processes and prospects for legal and judicial reform. The following section will address each of these efforts, focussing first on activities designed to create fora for elite debate on major policy and constitutional issues. This will be followed by a discussion of three constituencies and their propensities and capacities for promoting reform agendas.

Creating Fora for Policy Dialogue

Issues involving constitutional reform have assumed increased currency among many informed people in Sri Lanka. This is a reflection of public concern over the massive growth in executive branch power, a condition which grew out of the constitutional adoption of a Guallist form of presidential rule in 1978. The increased concentration of power in the Office of the President has led to a corresponding weakening of the unicameral legislature.

The need for strengthening the legislative and judicial branches of government as a counterbalance to the executive branch has served to generate limited discussion in some quarters concerning the need for constitutional reform. At the moment however, it is very unclear whether the current ruling elite will see it in its self-interest to open the political system to broader participation and power-sharing.

From the perspective of a development agency like TAF or A.I.D., a primary challenge in Sri Lanka is whether investments can be made which facilitate a constructive process of discussion and debate on important policy issues, such as constitutional reform. In this case, a proactive stance has been taken in supporting two distinct strategies. First, A.I.D. has provided a grant to the TAF to support an NGO in creating a forum where issues of constitutional reform can be addressed by important members of the political and intellectual elite. The NGO is the Law and Society Trust, a reputable, and long-standing organization which has been active in supporting research and education programs to enhance public knowledge and access to legal services, particularly among low-income and disadvantaged groups.

The A.I.D./TAF grant has enabled the Society to sponsor a series of workshops on issues pertaining to constitutional and institutional reform. Three workshops had been held at the time of the CDIE team's visit; the first featuring a discussion of constitutional reform, and the other two on electoral reform and federalism. Attendance at the forums has been by invitation only, with invitees being selected from among lawyers, judges, political leaders, academics and NGO officials.

TAF is also supporting a second strategy as a means of generating a more direct and focussed impact on policy-makers in the area of constitutional reform. This strategy features the establishment of a Center for Legislative Information at the University of Colombo. The Vice Chancellor of the University, a distinguished academic and public figure with personal access to the ruling elite, is taking the lead in founding the Center and setting the agenda of issues which it will address. Many of these issues involve major areas of constitutional reform, such as the devolution of power to local governments, electoral laws, and bringing greater balance between the executive and legislative branches of government.

The intent of the University Center will be to encourage university faculty to undertake policy research in response to the needs of the various parliamentary committees. It will follow a strategy of writing and circulating option papers on policy issues, working with members of parliament to coalesce around a particular option and then promoting it in the form of a position paper.

Support for applied research and policy analysis of the kind currently envisaged in the form of the University Center, rests on the assumption that the ruling elite will welcome and utilize analytical information made available to them through the endeavors of an expert research staff. However, it is recognized that on fundamental constitutional issues, where their power is at stake, it is always problematic whether policy-makers will entertain proposals from outside sources. Nevertheless, given the small financial cost of supporting the University Center, such investments seem warranted, if viewed as a kind of venture-capital, with potential returns that could substantially outweigh the original cost.

The Bar Association: A Potential Constituency?

An effort was made to interview important personages from a range of constituencies which could serve as important sources of support for legal reform and which are receiving assistance from A.I.D. or TAF. Three constituencies fall into these category: the Sri Lanka Bar Association; the commercial sector; and the media. Each will be discussed in their respective order.

The Sri Lanka Bar Association is an obvious candidate constituency for support of reforms in the legal system. In 1990 TAF began supporting the Bar's sponsorship of a continuing legal education program for practicing lawyers. Subsequently, USAID also provided funds in assisting with this effort. The intent of TAF and AID assistance is not only to enhance the competence and professionalism of lawyers, but also to support the Bar in becoming a more vigorous and service oriented professional organization.

The Bar Association's continuing education program is showing promise. It is offering a wide range of workshops designed to improve the knowledge and skills of younger lawyers, particularly those who practice outside of Colombo in more rural areas. Most young lawyers do not learn how to actually practice law in their law school education. Thus, the workshops are offering an opportunity to learn about the actual mechanics of how to move a case through the courts.

The only evaluation of these courses currently available is that undertaken by the team when it submitted a questionnaire to lawyers participating in two of the workshops. When asked to rate the quality of the training at the end of each of the workshops the respondents gave very favorable replies. Of the 71 respondents, 20 gave the workshop a score of very high, 23 high, 21 adequate, 2 poor and 5 had no opinion.

If the Bar is able to assume a more active role in upgrading the professional skills and standing of practicing lawyers, how might this translate into a more efficient and effective judicial system? The current workshops enable lawyers to acquire more knowledge about the mechanics of such things as how to follow formal procedures in processing cases and filing appeals. Such knowledge obviously represents a clear improvement in reducing the confusion, financial costs and delays associated with the absence of such skills. However, as revealed in Chapter V of this report, there are major constraints in the justice system which are not easily resolvable through training alone. Rather, more fundamental reforms will be necessary to address a range of institutional issues.

As a constituency the Bar has not been a major source of reformist pressure in working for fundamental changes in the legal system. The question arises as to whether it might assume such a role in the future, particularly in light the TAF USAID assistance which is designed to raise its professional standing. Some limited evidence suggests, that within its membership, there might be some strong but yet untapped reformist proclivities.

The "limited evidence" was revealed in responses to a questionnaire distributed by the team to lawyer participants in two of the Bar Association's workshops. It provides an indication of some of the issues which lawyers might nominate in framing a reform agenda. Two of the questions asked the workshop participants were open-ended inquiries concerning their views about what they would consider as major problems with the legal system. Their responses are tabulated in the following tables.

TABLE 1*

As a lawyer, what are the three most serious problems with the Sri Lankan legal system you encounter?

PROBLEM	NUMBER	PERCENTAGE
Delays	20	37.0%
Lack of Facilities	17	31.5%
Judges	16	29.6%
Closed System	16	29.6%
Court Staff	15	27.6%
Lawyers	14	25.9%
Unclear Procedure	9	16.7%
Poor Records	7	13.0%
Language	5	9.3%
Police	1	1.9%
Other	1	1.9%

TABLE 2*

List the three most critical problems you have encountered with court administration issues.

PROBLEM	NUMBER	PERCENTAGE
Court Staff	26	52.0%
Poor Records	17	34.0%
Delays	15	30.0%
Judges	13	26.0%
Lack of Facilities	11	22.0%
Unclear Procedure	7	14.0%
Closed System	5	10.0%
Lawyers	4	8.0%
Language	3	6.0%

*These questions were asked of 71 lawyer participants in the workshop. Of these, 50 indicated at least one problem and 21 did not respond, which may mean that they did not perceive any serious problems. The percentage is based on those who identified at least one problem. Because multiple responses were possible, the percentages may add up to more than 100 percent.

Delays obviously score high on both questions. As indicated in the following excerpts, the lawyer's responses indicated that delays occur across a broad spectrum of functions, including trials, securing court records, the issuing of summons, etc.

> "Trial dates are too far apart. Sometimes 4-5 months. Reluctance (by courts) to proceed into the afternoon session."
>
> "Delays in appellate courts in hearing an appeal for the first time."
>
> "End of the day being told that there is no time to hear the case."
>
> "Government (forensic) Analyst reports get delayed for years."

The problem of court staff also scores high on both questions. The comments of the respondents run the gamut from statements that the staff are corrupt, that they lack training, are indifferent, inefficient, or are insufficient in number. A frequent response is that the court staff are corrupt. Some of the respondents comments are as follows:

> "Office staff not cooperative when not bribed."
>
> "In the offices of most courts, nothing moves without a gratification."

Finally, the problem of poor records also appears as a frequent response. The responses range from not being able to obtain court records in a timely manner to fear that documents will be lost.

> "Apprehension of losing documents or the entire case record, and alterations of the minutes of the record."
>
> "Delay or non-appearance of case records at the correct time."
>
> "Getting certified copies of proceedings and other documents."

Based on what we know about the dynamics of court administration there is probably a strong link between the problem of court staff and poor records. This is exemplified in the response of one of the participants.

> "Malpractices exists such as bribing, removing court papers from the records, etc."

The remaining responses to the two questions cover a range of topics and have been grouped into the listed categories. Thus, under the category of "Judges, and Lawyers" are those comments

critical of the adequacy of knowledge, training, skills, attitudes or honesty of judges and lawyers. The category of "Closed System," refers to instances where the respondent indicated that the costs of litigation are too expensive for poor people, or a lack of legal knowledge on the part of the public. The category of language refers to problems of communication in the court when there is a lack of Sinhala or English fluency.

Finally, the lack of facilities received a high frequency response. In particular, respondents identified the lack of space and poor maintenance of court houses, especially in the outstations. In interviews the lack of facilities was frequently mentioned as a major problem. This included the absence of libraries[3], canteens, building maintenance, toilets, and areas for women attorneys. As one judge said, "We never know when the roof might fall down on us." Many of the court houses were built during the colonial period, and little has been done to them since.

The above responses suggest that there is plenty of grist for the mill in framing a reform agenda, and if the proper fora were created the issues and deficiencies identified by the participants might constitute the beginning basis for a reform constituency within the Bar and law community in general.[4] TAF is encouraging such forum activities, with an initial effort in organizing bar-bench conferences, but the level of distrust between lawyers and judges has served to inhibit open discussion. With the Bar's leadership however, TAF has secured first-time Government consent

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[3] With the exception of the courts in Colombo, every court the team visited had an incredibly inadequate library. Some courts had as few as six books written ten to fifty years ago. Some judges buy their own books in order to have something. Others cannot afford to do so.

In the courts visited by the team there were no consultation rooms where attorneys can have confidential conversations with their clients. There are very few courts in the outstations which have photocopy machines on the premises. The absence of these machines is even more painful in the District Courts, as cases are often fought primarily on documentary evidence.

[4] In part, the dissatisfaction expressed by the respondents is likely associated with younger members of the profession, who have yet to be fully established in their practice or fully socialized into the prevailing norms of court behavior. Nearly 40 percent of the respondents were under the age of 32. Their youthful energy and discontent with the status-quo might function as a powerful engine for change.

in polling lawyers and judges on their opinions of what the major issues are in judicial reform. Polling is a powerful tool and if used appropriately this may generate more interest in reform than what is now apparent in the justice system.

The Media: A Hesitant Voice

An active and vigorous media can be a powerful constituency for the public airing of legal reform issues and an instrument for the oversight of the judicial system as a whole. In Sri Lanka, the media has been severely constrained from fulfilling this role. The electronic media (television and radio) has been tightly controlled by the government. Until 1992, there were no private radio or television stations.

All news reporting has been closely managed by the government and the level of control is extensive. Private radio stations and a newly established private television station have not been allowed to report the news or to have documentaries about Sri Lanka, and have no news staff.

Individual ministers in the government have the ability to punish news editors if they do not like what is reported. A recent suspension of a news manager at Rupavihini, the state-owned, national television station, is a good example. He was put on leave because of news reporting which apparently had been approved by his superiors. A government minister did not like the report and had him suspended.

Because of the above limitations, the electronic media has focussed primarily on providing public service information on the legal system. In one case, a popular weekly series produced a teledrama highlighting the mediation boards. The increased popularity of television (it has been available since 1979) among the Sri Lankan population strengthens the use of this medium to transmit issues of legal literacy.

The situation with respect to the print media is not much different from that of the electronic media. There has been a strong tradition of privately owned newspapers. Since the government took over the largest newspaper group (Lakehouse) in 1973, they have been competing with the private newspapers. Except in times of national crisis, the government has not usually directly tried to control the private newspapers. However indirect methods of control have been extensive and as effective as any direct methods. For example, the largest advertiser in the country is the government and the government has withdrawn advertising to control the news reported in private newspapers.

Where indirect methods of control fail, more pointed measures have been employed to control the print media. Journalists have been subjected to harassment by government authorities. The harassment

has often been very subtle except for a period in early 1993, when government supporters began assaulting journalists. The typical harassment has involved investigation of their personal lives or police searches or arrests with release after a few hours.

Aside from the above constraints, investigative reporting on government operations and behavior has also been limited by the media's access to information. There is no legal right of information concerning most government activities. As a result, journalists frequently are unable to gather basic factual information and documentary information about governmental actions.

When it comes to reporting on the judicial system, reporters frequently mentioned in interviews their hesitancy to engage in commentary on judicial cases and judgements for fear that they would be subject to contempt of court citations. In actual fact there have been few such citations, but the ambiguity of contempt laws helps to generate the fear no matter how unfounded it might be. In addition, editors of papers felt constrained in their reporting by ambiguous laws relating to slander and breach of privilege.

To begin addressing the problem of strengthening the role of the media, for the past several years TAF has sought to improve the quality of journalists by holding training seminars for practicing journalists, and by funding the development of a school of journalism.[5] These efforts are intended to create a more professional cadre of journalists who will engage in more vigorous pursuit of news and investigative reporting.

The Commercial Sector: Avoidance at all Costs

The legal system has the potential to both constrain or assist economic development. With increased liberalization of the economy, the need for courts to resolve disputes involving growing economic enterprises increases. Access and entry to the market is determined by the legal system, as is the sanctity of property and contract rights. Presumably therefore, the commercial sector would seem to be a constituency with a strong vested interest in judicial reform.

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[5]TAF has funded the Sri Lanka Environmental Journalists Forum (SLEJF) to increase the awareness of journalists about specific environmental issues. For example, the SLEJF recently took a group of journalists on a tour of environmental problems in the hill country around Nuwara Eliya. For 3 days they travelled to lakes, lumbering operations and new road building projects. The purpose was to create an awareness of problems and to increase the number of articles that they might write in their newspapers.

In interviews conducted with managers from a range of enterprises and commercial associations it soon became apparent that they were not functioning as a constituency for legal and judicial reform and had little inclination to do so in the future. Rather, their approach was to circumvent the courts at all costs, thereby avoiding the lengthy expenditure of time and money entailed in court litigation. These managers felt that long delays in the court system make it very difficult to carry out business. Money or property tied up in a dispute cannot generate income.

The CEO of one of the largest conglomerate holding companies in Sri Lanka stated that, "As far as I know, our group does not have a single case pending in the courts." What makes this remarkable is that any case going to the courts will take 5 to 10 years to resolve. Thus this company had probably gone for at least 5 years without a new court case.

Many managers felt that even if a court decision is rendered in a timely fashion, Sri Lanka does not have an efficient system of enforcing the order. This is particularly a problem for banks trying to recover bad loans. They can not get the property left as collateral back after the courts have resolved the case. Sri Lankan mortgage law is based on the Roman-Dutch system in which title does not pass to the person or company which loans the money. To recover property, the mortgager must sue the person who took the loan to recover the property from them. Thus the borrower holds title until the court resolves the case, and then there is no way to enforce the court order.

All of the businessmen interviewed stated that the mechanisms they use to circumvent the courts do not have a significant financial impact on them. One of the strategies employed is to rent rather that purchase land in order avoid the risk of having titles contested. The CEO of one corporation cited a joint venture with an Australian company to build a fabric center. They needed a 20 acre site. After finding a suitable site and agreeing on a price with the seller, they went to their lawyers. The lawyers advised against the construction of the plant because many titles in Sri Lanka are not secure. Because there is no title insurance available in the country, they had to begin to look for another site.

Sri Lanka has very favorable laws protecting worker rights and a worker can take his or her termination of employment to the Labour Tribunals. The case can be delayed in the courts for years. Many managers interviewed indicated that it is much easier and cheaper for the company to continue to pay the employee than to go to the courts to fire an incompetent worker.

Finally, it was also indicated that most all contracts are written to avoid potential disputes. Money transactions are carried out when products or services are turned over. Some contracts even

require mediation to avoid court litigation. Financial arrangements between companies are usually based on long term deals which make it uneconomical to break off the relationship. Both parties to the arrangement will benefit if they continue to work together.

In brief, because of the ability of the commercial companies to circumvent the legal system, there has been only limited impetus from the business community to reform commercial law. None of the business people interviewed, saw a strong need to reform the system, except for the bankers who want debt recovery reform.

Recent attempts to strengthen the collective advocacy role of commercial associations have yet to yield much success. USAID has funded The Federation of Chambers of Commerce and Industry of Sri Lanka (FCCISL) to strengthen their ability to influence government. However, a representative of the FCCISL indicated that "most people prefer the backdoor." "They do not want to deal with macro-level problems." This sentiment was supported by a leader of the National Chamber of Commerce who described his problems of trying to find business representatives to participate in a commission created to reform the Company Law. Out of 300 members, only 2 expressed an interest in being nominated to participate on the Commission.

Summary

Aside from the many factors mentioned above which inhibit constituency development, there are other conditions, intrinsic to the larger Sri Lanka scene, which serve as disincentives for interest groups to organize and pressure the government for reform in general and legal reform in particular.

The interpersonal nature of Sri Lankan culture works against broad representative groups petitioning the government. Tradition and culture have led to individuals pressing the appropriate government officials for action. Even when groups are utilized, individuals will act on their own. This problem was cited by all of the business and commercial figures who were interviewed. They mentioned this as a serious problem for smaller businesses which are led by people who do not have the stature and status of the chief executive officers of the larger companies. These small companies do not have influence and can not usually resolve their problems in a timely fashion.

A second factor constraining constituency development is the highly politicized environment of Sri Lankan society which has led to the frequent inability to distinguish between nonpartisan and partisan pressure. Almost all lobbying behavior is seen as possessing a partisan slant. It is very difficult for nonpartisan interest groups to form and function. Typically if they are successful with

one government, the next government will see them as partisan and restrict their activities. For example, when the team suggested that a citizen based court watch group might be started, as has been done in the Philippines, informed Sri Lankans responded that this would not be well received. In an environment where political trust has been seriously eroded, such an initiative would be judged as having an ulterior motive in discrediting the government or other power centers.

III. STRUCTURAL REFORM STRATEGIES

TAF and USAID have been very supportive of the Government's effort in introducing a national mediation program. The program is designed to create greater access to mediation as a mechanism for conflict resolution. The mediation effort could have been discussed in the next chapter on access creation strategies. However, since this is a new program and represents a major structural change, rather than simply a refinement of existing structures, it will be discussed in this chapter.

Mediation: A Promising Venture

The use of mediation as an adjunct to the formal court system has a long-history in Sri Lanka, dating back to the pre-colonial era and extending into the period of British rule. In the early post-colonial era, and in response to increased court congestion, the Government established conciliation councils as a mechanism for alternative dispute resolution. The councils had the power to issue summons and settlements which were accorded the status of a court decree.

In the face of increased criticism and controversy the conciliation councils were abolished in 1978, and some of their functions were transferred to the courts of first instance. Assessments of the conciliation council experience by Sri Lankans revealed some serious deficiencies. In their view many of the councils had become politicized, with mediators appointed on the basis of patronage rather than skill, and with bias, abuse and delay in settlements becoming a more prominent feature in council performance. In addition, none of the mediators had received training in methods of dispute settlement, and many felt that the councils, with subpoena power and settlements having a decree status, were taking on the characteristics of court proceedings rather than mediation sessions.

With the abolition of the councils, the courts soon became burdened with increased caseloads. The backlog became so great, that in 1988, the government enacted, for the second time, the establishment of mediation boards. Implementation of the mediation board legislation began in 1990 and by December 1991, 211 boards

had been created. A board, which can consist from 10 to 30 mediators, was created for every Divisional Secretariat on the island except in the areas where the Tamil rebels were conducting a war against the government in the Eastern and Northern Provinces.

The boards utilize trained volunteer mediators to resolve conflicts that might otherwise require court attention. The Mediation Board members are volunteers who receive a small stipend for expenses. They are usually drawn from highly respected people in their communities. Often they are retired teachers, civil servants and professional people. Most boards meet once a month and some on a weekly basis, usually on a weekend day. The boards are generally in session once or twice a weekend day each month. They hold their sessions in public buildings, such as school buildings, and disputants sit around tables with mediators to discuss their grievances.

The design of the new boards deliberately built on the lessons learned from the failures of the previous conciliation councils. These include:

(1) Distancing the governing board from the political arena. The 211 mediation boards are overseen by a Mediation Commission which is made up of 5 former Supreme Court and Appeals Court justices. The stature of the current chair of the Commission and his 4 colleagues on the Commission has helped the Boards to remain independent of political influence.

(2) Appointments based on merit. Candidate mediators are chosen by the Commission after filling out an application which is screened by the Commission. Those who pass the screening participate in a training program where evaluation reports on each candidate are submitted to the Commission. These evaluations are used in the final selection and appointment of mediators. In addition, any hint of current political activity on the part of applicants results in immediate disqualification from consideration.

(3) Quality Control Monitoring. An effort is made by mediator trainers to monitor the performance of the boards' mediators to assure that they are adhering to the rules of mediation.

(4) Elimination of summons power. The mediation boards have no power to summon disputants.

(5) Elimination of decree status. The settlements achieved in the mediation boards do not have decree status.

The use of the boards has grown rapidly over the last 3 years. After about a year of existence the boards averaged 24 cases per month. After nearly three years of existence, the boards were

averaging about 56.3 cases per month. Through May 1993, the official records of the Mediation Board Commission indicate that the boards had received 108,520 cases. According to Government officials approximately 60,000 of these cases might have ended up in the courts had it not been for the availability of seeking settlements through the mediation boards.

In order to acquire a deeper understanding of the contributions of the mediation boards, the team gathered data on their performance from a range of sources. First, visits were made to eleven boards where a sample of 1528 cases were randomly selected from pages of the official registers kept by the chairs of the boards. Second, interviews were undertaken with many of these board chairs. Finally, direct observations were made of several of the boards in operation.

An analysis of the 1528 cases reveals that the mediation process led to settlements in about 62.0 percent of the sample cases. However, there are limited records available to indicate how many of these settlements were actually implemented by the disputing parties.[6] The board chairmen interviewed were united in their belief that almost all of the cases with an agreed upon settlement resulted in implementation of that settlement. The mediation board chair in Ambalantota, in Hambantota district kept records of implementation which indicated that fewer than 2 percent of the cases which were settled failed to be implemented.[7] However, as indicated below, in more urbanized areas, such as Colombo, there is not sufficient data on which to offer definitive statements of settlement rates.

One purpose of the boards is to speed up the process of justice and allow people of moderate and limited means access to a system of justice. Cases are supposed to be resolved by the boards within 30

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[6]Although most of the board chairs were exceptionally dedicated to keeping accurate records, some chairs did not deep orderly records. An example is a board which was visited by a team member. The Chair did not have any records of his cases and also had apparently failed to submit his monthly reports to the Mediation Board Commission. It should be noted that the majority of records were in quality condition due to the ability and attention of each of the mediation board chairs.

[7]The ability of the boards to resolve conflicts varies greatly. The range in the 11 boards where cases were sampled, went from a low of 41.9% to high of 81.4% of the cases settled. Although the mediators are not supposed to force resolution of conflicts, they are in a position to create social pressure for the two sides to come to agreement.

days and the only cost to participants is a 5 rupee (ten cents) fee when filing a case. Based on the 1528 sample cases, the success of the boards in resolving cases in 30 days has been good: 60.9% of the cases were resolved within 30 days and 94.1% of the cases were resolved within 90 days.

Mediation board records do not collect data on the economic status of the disputants. In interviews, board chairmen indicated that the boards were being utilized by poor people and this assertion was corroborated in observations of actual board performance. Although, as indicated below, many bank loan cases involve the poor as defendants rather than claimants. The boards do keep records on gender, and women were involved in bringing complaints to the board in 21.9% of the cases brought by individuals to the boards. Interestingly, the types of cases brought by women were the same as those brought by men.

For many boards, loan cases brought by banks and private lending associations have come to be a dominant type of case with 46.5 percent of the cases in this category. Loan cases tended to be more common in urban areas. In a sample of board cases from the Colombo Mediation Board, all 64 cases examined were bad loan cases. This compares to more rural boards such as Beliatte in the south and Ella in Badulla district where only about one-third were loan cases.

Land disputes were the second most common type of case with 34.3 percent of the sample comprising this type of problem. Most of these cases involved boundary disputes, and an assortment of other grievances concerning water use, road access, partitions, etc. Another 8 percent involved minor crimes (assault, breach of peace, theft) which the Boards are authorized to mediate. The remainder of the cases concerned such items as license and tax non-payments, failure of rental payments, and family issues.

Issues

Loan Default Cases

Many of the boards are finding that loan cases where banks and finance companies appear as complainants are taking increasingly larger portions of the boards' time. The banks and finance companies like using the boards because most of loans are small in amount and it would not be cost effective for them to litigate such cases.

In observations of several board operations, it was apparent that loan cases constituted a large portion of the board business with mediators negotiating with defaulters and discounting their loans as a incentive for repayment. However, it was not clear whether those in default were complying with promised repayment schedules. Preliminary inquiries with bank officials provided no definitive

data on loan repayments. This apparently reflects the fact that the use of the boards for loan repayments is a relatively recent phenomenon and therefore it is to early to know whether loan defaulters will observe board settlements.

Aside from the compliance factor, some mediators are worried that the presence of the banks will sully and eventually harm the boards. They felt that it was unethical for a banking or finance institution to take advantage of free services that are generally intended to benefit the poor. Other mediators saw no problem with the banks using the boards. Some of these mediators even allowed the Banks to provide their boards with pens, paper, refreshments -- whatever the boards were lacking. The mediators were unconcerned with the appearance of bias such behavior might generate.

At the moment it is unclear whether rank and file Sri Lankans see the mediation boards being transformed into loan collection agencies working on behalf of larger institutional or government interests (many of the outstanding loans are from state owned banks). The risk of such perceptions evolving in this direction might be, in part, conditioned with regard to a second issue; the power of subpoena.

Subpoena Power

As mentioned above, unlike their predecessors (the conciliation boards), the mediation boards have not been given the power to subpoena disputants. The process is completely voluntary. A disputant comes to the board and files a complaint. The Board then notifies the other party and asks them to come to the board meetings.

Many mediators complained about their lack of having subpoena power and that in many cases, one party does not respond to a notice of a mediation proceeding. The data collected on the 1528 cases suggests that approximately 16 percent of this number were cases where one party failed to appear at a board session.

Many mediators want to be able to have a magistrate send out summons to mediation and the Mediation Commission would like to create a partial subpoena power requiring people to come to the board meeting. They would not be required to settle the dispute but it is believed that if they came, there would be a good chance they would agree to a settlement.

It is not clear whether mediators will be granted subpoena power. There is concern in some quarters that if mediators are given compulsory powers, they will be too much like the courts and not an alternative at all. Finally, there are those who worry that such powers could lead to the same types of problems the courts experience with corrupt fiscals delivering summons only when paid to do so. Some also worry that summons could be used to advance

the political agenda of a mediation chairmen; summoning only his political enemies.

The complicating factor with respect to subpoena power is that if given to the boards, many of subpoenas would be delivered on behalf of banks and finance companies which now constitute half or more of some board cases. Thus, there would be a risk that the founding spirit of the mediation boards of serving the mass of common people who do not normally have access to the courts, will end up being seen as an instrument for exercising claims against these very people. This is not to suggest that loans should not be repaid, but using the boards for this purpose could possibly defile and subvert their intended mission.

Sustainability

The use of volunteer mediators and board chairpersons raises questions about how long these individuals will continue without some form of compensation or stronger administrative support. Mediators, and particularly board chairman, indicated that they frequently work long hours in a job that does not pay money. When asked why they do it, most responded in the same manner: to take satisfaction from the knowledge that they have helped a neighbor. Many felt that if mediators were to be paid, thereby turning it into a job, mediators might come to care less, or become ambitious and bring politics to the boards, or might even become greedy and turn to corruption. They thought it also made a difference in terms of who is attracted to the job. Those mediators currently serving were doing so out of concern; they wondered what motivations paid mediators might bring to the board.

While there seemed to be definite interest in keeping board membership a voluntary service, many of these individuals were having to hold to this commitment at some financial cost. Financially, transportation is a problem for some of the boards. All mediators must provide their own transportation to mediation and dispute sites.[8] Many mediators are not well to do and must depend upon their pension for survival, and since some sites can be two to three hours away, the expense can become significant. The government provides each mediator with approximately $2 per month for bus fare and transportation. This amount falls substantially short of their needs. Some have used it to buy other supplies for the boards like pencils and note paper, photo copying, etc.

[8]Frequently, mediators cannot resolve a dispute simply by listening to the parties. In many cases it becomes necessary to travel to the place where the dispute began. Often the disputes center around the placement of a fence, the exact location of a land boundary, or on who's land a fruit bearing plant grows.

The heaviest burden of work falls on board chairpersons who have to spend substantial time on organizing and managing the work of their board membership. Since the Government does not provide chairpersons with office facilities many of those interviewed had turned their homes into offices for the mediation board. They complained that people line up to see them from early morning until late evening. The chairpersons were more than happy, generally, to give this time to their neighbors, but they wanted to be able to meet away from their home so that their family would not be bothered. They also felt that a separate office would give them a little more control over which hours they gave to the cause of mediation.[9]

Summary

A number of insights can be drawn from the current Sri Lanka experience in introducing and managing a national alternative dispute program. First, there appears to be a well-spring of civic consciousness in the form of volunteers to serve as board members, which the government has effectively drawn upon in staffing the mediation boards. The team was very impressed with the maturity and dedication of the mediators it met, of whom, almost all were men. Presumably there would also be a well-spring of talent and civic commitment on the female side which could be tapped to help staff clinics which could serve the needs of women and households in need of legal services and counseling.

The Sri Lanka experience may indicate that in many countries governments ought to be tapping a potential reservoir of community good-will and public service in mediating conflicts which would otherwise remain unresolved or end up on overloaded court dockets. Using volunteer mediators, many of whom may be retired

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[9]There is one thing about which the mediation chairpersons were almost unanimous in agreement. That is the need for a clerk. The chairpersons, in addition to attending to the mediation sessions, must also accept cases, notices to appear, and address and stamp the envelopes. In some cases, this must be done three or four times. For some chairpersons this brought the total number of mailed items to well over 300 per month.

The team saw the storage rooms within the homes of several mediators. It was readily apparent that there is a great deal of paper work involved for chairpersons and that a clerk would be very helpful. The chairpersons kept the records of all the cases their boards had heard since their creation, kept copies of all paper going back and forth between the boards and the Ministry of Justice, and copies as well of all documentation and letters involved with their cases.

professionals, represents a significant economic savings over that of engaging in court litigation.

A second lesson from the Sri Lankan experience is that the use of mediation councils requires constant management supervision in order to assure that councils do not veer off-course and violate the spirit and letter of the law of what they are suppose to represent. There is on occasion a natural tendency for board members to want to use social pressure as the functional equivalent of a summons to compel a disputant to appear. In addition, there is also the inclination among board members to want to acquire more expertise in the technical matters of the law, which can subtly serve to transform their orientation from that of mediating to one of judging.

A particularly vexing issue for management concerns shielding the boards from outside political pressure. As in many countries, government agencies in the Sri Lankan political system are highly politicized and the patronage system is extremely strong. The mediation boards require that they have the trust and full faith of the people in their decisions. This requires that political interference be kept out of the system. It appears that the current Mediation Board Commission has been extremely successful at excluding politics. However, future success will require continuing vigilance on the part of the Mediation Commission.

The final issue concerns the problem of sustainability for ADR mechanisms such as with the Sri Lanka mediation boards. In brief, how does one resist institutional decay? There will be turnover among the volunteers. Will the newcomers, and particularly second and third generation board chairs, be able to hold up under a burdensome work schedule and still maintain the verve and elan which is now so apparent among the first generation mediators? The boards will bear close watching in order to head-off incipient signs of institutional fatigue.

IV. ACCESS CREATION STRATEGIES

Legal Aid: The Orphan of the Legal System

Since the mid 1980s TAF has been providing small grants to several organizations engaged in rendering free legal aid services. The recipients of this assistance have been the Legal Aid Commission, which is government operated; the Open University Legal Aid Clinic; and two NGOs: the Women's Lawyers Association and Sarvodaya legal aid services.

The team collected a range of data in order to acquire some understanding of the reach and impact of these organizations. The information of interest to the team included such things as: who

are the clients, are they poor, educated, rural, urban, etc.; with what kinds of problems do the clinics work; what types of assistance do the clinics tend to provide; upon which methods of dispute resolution do they rely; and what is the length of time needed to settle the clients' problems (measured from the client's first contact with the clinic to the point at which the clinic decided to close the case)?

Two methods were used to gather data: (1) a random sample from written records of 222 individual cases; and, (2) data from oral interviews with 14 clients.[10] In the first method, the team used a standardized questionnaire in all four clinics. Each clinic gathered their data differently and some information was not available at all of the clinics. For example, of the 222 written records, 91 did not include data on the income level of the clients. However, based on interviews with legal aid staff and observations of the clinics in operation it was apparent that the majority of clients were from a lower income strata.

Despite deficiencies associated with the written records of individual cases, some insights can be gleaned from the available data. First, the supply of legal aid services is very limited and not easily accessible. Each of the above legal aid organizations has only one office, all of which are located in the Colombo metropolitan area. It was generally agreed upon by all informants that legal aid outside of Colombo was rarely available except from generous lawyers who gave free time in the outstations.

All four of the legal aid organizations lack sufficient funds to supply legal aid outside of Colombo. The Open Un. and the Legal Aid Commission are planning to establish some outstation offices, but are still seeking funding to do so. The two NGOs are primarily dependent upon outside donor funding for their operations. Indeed, in the absence of donor funds these organizations can quickly wither away, and the Women's Lawyers Association was facing this prospect during the team's visit. Their monthly operating expenses were running around $400 to $500 a month, and they lacked sufficient funds to carry on much beyond the remainder of the year.

As a government body, the Legal Aid Commission has a relatively secure financial base. However, it currently operates on a shoestring budget of $10,000 annually, a large portion of which is used for rental of office space in Colombo. While the Commission is one of the few organizations which will go to court on behalf of its clients, budget limitations serve to constrain its service in this area. The Commission has only a few lawyers of its own, and

[10]The survey sample at Sarvodaya consisted of 30 case records and 5 interviews; the Legal Aid Commission 57 cases and five interviews; the Women Lawyer's Association 77 cases and 3 interviews; and the Open University 58 cases and one interview.

relies on a cadre of outside lawyers, most of whom are young entrants to the profession. They will take an individual case on a part time basis for a nominal flat fee, well below market rates. However, if the case evolves in a direction requiring extended court appearances and preparation, some lawyers will abandon the case and their client.

Aside from the Legal Aid Commission, the Open Un. clinic provides a salary for one part time lawyer on its staff. Sarvodaya uses part time volunteer lawyers, and the Women's Lawyers Association has no lawyers, either on salary or as volunteers in its office, and rather refers clients to lawyers who have listed their names with the Association and are prepared to provide pro bono services.

What is the level of demand for legal aid? Interviews with legal aid staff indicated approximately 200 individuals are served by the Commission on a monthly basis, with the Women Lawyer's association indicating a similar number. The Open University is serving a smaller number of individuals, but their office hours are limited to several afternoons each week.

What kinds of cases are being addressed through legal aid? Half of the cases involve land disputes (18.5%), marital issues (21.1%), and accident claims (10.4%). The remainder of the cases concern grievances in such areas as employment and pension grievances (9.5%), tenant and rental issues (6.8%), estate disputes (5.0%), and criminal offenses (3.2%).

An examination of the defendants in these 222 cases indicates that 27.5% were family members of the complainant, 27.1% were against non family persons, and 10.4% against government agencies. Only 7.7% were complaints against employers and private businesses.

A demographic breakdown down of the plaintiffs indicates that 77% were Sinhalese and 14.4% were Tamil. Approximately 50% of the plaintiffs were under the age of 40. Income status is indirectly revealed in the fact that 25.7% were unemployed or were housewives, with another 22.6% being unskilled labor or employed in sales/clerical work. Of the 61% of the cases reporting income data, nearly two-thirds of this number had a monthly income of less than $40. This level of income is about average for per capita income in Sri Lanka. That the reported level for clients is not above the average probably reflects that fact that nearly two-thirds of all legal aid clients in the sample were women.

What kinds of services did the legal aid organizations provide to their clients? From the sample of 222 cases, only 17.1 % of cases were filed in court, but there were another 11.3% of the sample which were referred to lawyers and some of these might have gone to court. The low number of cases which went to court reflects the fact that almost all of these cases were filed by the Legal Aid

Commission. As mentioned above the Women's Lawyers Association and Sarvodaya provide legal advice and but rarely direct services to a client for court action. If a problem required legal action they would refer their client to a lawyer or advise them to go to the Legal Aid Commission. In a few cases the Open Un. did go to court but it is relatively new and has yet to establish much of a track record in this area.

How much time elapsed between the interval when a client requested legal aid and when the case was registered settled or closed in the records of the legal aid organization? The records indicate that approximately 50 percent of the cases were closed on the same day there was a request for legal aid by the client, which means that either the client was given legal advise at the time of his or her initial visit or was referred to another legal source, such as the Legal Aid Commission. Another 10 percent of the cases were closed within one month, whereas 11 percent took more than a year to be completed. The remaining cases, approximately 30 percent, were closed after one month but within a year.

What was the outcome of the services rendered by the four legal aid organizations? The sample data indicates that over half the cases (54.1%) were settled without filing court action. This usually involved providing advice to the client, perhaps writing a letter on his or her behalf, or referring the client to a lawyer. Another 21% of the sample were cases still pending. Finally, 6.8% of the cases had been won in court settlements, 2.3% lost in court, and 2.3% settled out of court.

While the legal aid organizations might win a court judgement in favor of their client, legal aid staff indicated that the judgement frequently would not be complied with by the losing party. The legal aid organization would then have the courts issue a summons but again legal aid staff indicated that in many instances the non-complying party would evade the summons, frequently by bribing the summons server. In brief, lack of enforcement of court judgements is a serious problem.

Summary

In Sri Lanka, it would appear that the need for legal aid is high, particularly for women. The costs of such aid to the provider is low, but the transaction and opportunity costs for clients are high for those outside of Colombo, who must travel to the city to access legal aid services.[11]

The above conclusions would suggest that from a public policy perspective legal aid should rank higher as a priority government

[11]A rough calculation indicates that, on average, it costs the Legal Aid Commission about $4.00 per client served.

investment in making these services available to impoverished and vulnerable elements of the population. Such investments would involve little cost and could be rendered without adding to the government bureaucracy. Many of the services could be provided through sub-contracting arrangements with NGOs who offer legal aid services. It also suggests that there is a market for training paralegals who could staff these services, using their skills to screen and counsel clients before necessarily referring them to full-fledged lawyers.

A corollary to the above conclusion is that aside from possible sub-contracting arrangements much more innovative thought needs to be given on how to dispense legal services more effectively to the vast majority of low income people. This is particularly the case for many women, who suffer from abuse, violence and abandonment, which is well documented in a recent study of the Legal Aid Centre, at the University of Colombo (de Silva and Jayawardena, 1993). Most women with problems of this nature are not availing themselves of the mediation councils which are overwhelmingly staffed by men, and who hold their sessions in full public view.

Many poor women need both legal services, counseling and temporary shelter; in other words, a place where these services are integrated within one location. Only Women-in-Need, an NGO currently being supported by TAF has an integrated clinic of this kind located in Colombo.

V. LEGAL SYSTEM STRENGTHENING STRATEGIES

TAF has have been active in supporting legal system strengthening projects in the justice system. This has included TAF funding assistance to the Judges Training Institute from 1986 to 1990, assistance in the computerization of the Supreme Court in 1989; and support for curricula reform at the three law faculties.

The Courts: Constraints on Efficiency and Effectiveness

TAF judicial projects have met with mixed success. The Judges' Training Institute has never really generated strong government support and commitment. Thus, TAF assistance to the Institute ended in 1991. Computerization of the Supreme Court has served to improve the administration of its caseload. However, computers exist in only a handful of the other courts, and there are no links between those computers. A judge cannot, just by using the computer, find out what has been the major decisions of the other courts. Judges interviewed generally agreed that all courts need to be computerized.

The need for computerization raises larger issues of efficiency and effectiveness in managing a massive backlog of cases which burden court dockets. In 1990, the backlog was estimated at more than 380,000 cases. One district judge allowed the team to look at his record book, which indicated that as of mid July, 1993, he had completely finished 34 cases, had 312 cases in various phases of trial, and had 1,099 that he had not yet called or read.

Why is there such an enormous backlog of cases? The team sought to answer this question and discovered that little research had been conducted on court administration and case delay. In the absence of much secondary source material, the team relied on its own observations of seven courts, along with interviews with judges, lawyers, and court administrators in order to acquire some sense of what might be clogging the arteries of the judicial system. The picture that emerges is one that suggests the backlog can be attributed to a number of constraints.

First, it would appear that many judges are not spending much time on the bench. The team was told by many officials that judges were not putting in a full day of work and this was confirmed in the team's observations of the court room. The law of Sri Lanka divides every calendar day into two judicial days for all the courts of first instance. The first judicial day begins no later than 9:45 a.m.; the second day begins no later than 1:15 p.m.. The law mandates that the judges must schedule trials and inquiries for all judicial days. Each judicial day must be of a minimum duration of two and one half hours of sitting in open court. Whenever any judge is unable to fulfil this schedule, he/she must, by law, submit a written report, stating the reasons for such failure, to the Judicial Service Commission.

As stated above, the team observed seven courts at the Magistrate and District Court level and at the Court of Appeal. The following hours were maintained by those courts on the days the team made announced visits. One Court held open court for one hour, but at least started at the time required by law; three Courts both started and finished the morning session at the proper time, but held no afternoon sessions; one Court lasted less than the required time, but this was due to mix up in files;[12] another Court's proceedings lasted only one hour and started over one hour late; and one Court started over an hour late, but lasted almost the entire 2.5 hours required by law for the first judicial day. None of the courts had afternoon sessions (the required second judicial

[12] As is often the case, due to inadequate mechanisms for receiving, storing and retrieving data, the judge's cases were sent to another judge who apparently decided to deal with them rather than waste time tracking down the rightful court. The missing case was a trial, thus its absence left a hole in the Court calendar.

day).[13] Many judges indicated that they used their afternoons to do paperwork, prepare the next day's cases, and work with court staff.

Some observers suggested that the lack of bench-time indicates a lack of discipline on the part of judges. However, it would be premature to assume that not putting the required daily time on the bench means that judges are lacking in discipline. Perhaps this is the case in some instances, but further examination of court dynamics suggests that other concerns may be consuming an inordinate amount of judges' time. This leads to a diagnosis of a second constraint which resides in the procedures followed within the courts.

In the court observations it was noted that more than two-thirds of the courts' time is dedicated to what their system calls "motion role"[14]. Motion roll is a long list of cases that require a motion be made, and/or a new date be set. The new date may be for any trial stage ranging from pre-trial hearings to post-trial executions of the judgment. During observations, the team observed the courts take as many as 32 motion role cases. Each motion role case lasted no less than one minute and, generally, no longer than six minutes. During this brief period lawyers, defendants and plaintiffs may or may not appear, and some very brief cross-examination may or may not occur. Then, there would be a rescheduling for further examination or judgement.

In short, trials are non-continuous. For instance, in one trial the team witnessed, the plaintiff had provided direct testimony in the case one month earlier. This time, it was the defendant's attorney's turn to cross examine the plaintiff. The examination did not finish, so about one month after the observed session, the parties will return to the court to resume cross-examination. In Sri Lanka's courts, usually no less than one month will separate the hearing of the case.

In the absence of continuous trials, judges are constantly having to return to a case to update his or her knowledge for the next scheduled appearance, which may be rescheduled again at a later date. Since 30 or 40 cases may be up for a motion call on any one day, the judge has a lot of material to master in order to keep abreast of their current disposition.

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[13]Since one of the courts observed was an appeals court, and not a court of first instance, it is not required to have afternoon sessions.

[14] Judges interviewed complained that motion role could be done by a clerk or some other type of qualified personnel and that it is one of the biggest wastes of judges' time. Time spent on motion role is time not spent on a trial.

In addition to the motion call, judges frequently overbook their daily calendar, by scheduling, for example, eight trials when in fact they have only time to conduct two of them. They do this knowing that some defendants, plaintiffs or witnesses will not make an appearance, thus requiring a rescheduling of some of the trials. However, it does require considerably more preparation to review the file of eight cases as opposed to just two.

The judge also has other work to tend to which can be quite time consuming. For example, in the appeals court documents are prepared in English. Many court stenographers have a poor command of English, which means the judge must hand write, rather than dictate, his decision. Even after he gives them the complete text to type, he then has to spend time proof reading and correcting the text. It can take several such proof readings sessions to correct the written decision.

The problems which the judge encounters in managing his or her schedule are compounded by a **third** constraint: inadequate storage and retrieval systems for court records, a bane which seems almost a universal characteristic of Third World courts. Files are frequently misplaced or lost. As a consequence, court sessions often can be delayed in one court because records cannot be found, while in another court in the same building, the court is overwhelmed with cases mistakenly brought to that court. For instance, in one case, the Judge scheduled two trials for the same day and did so knowing the attorneys in both cases would be present. The judge was correct as to the presence of the attorneys. Everything was ready to go except one of the case files was sent to the wrong court. The attorneys on that case had to move to the other court. This wasted time in the original court because the court session ended one and one half hours early. Another trial could have been heard in that time. The recipient court also had to stay in session at least an additional one and one half hours, or reschedule the trial.

A **fourth** constraint emerges with respect to the timely submission of evidence. The Office of the Government Analyst (GA) is the government agency charged with the duty of conducting all laboratory investigations for the entire nation. Thus, if there is an environmental issue in a case the government is pursuing, the GA will be the one to do all the lab work for the government. If someone is murdered, the GA does all the lab work except the autopsy. In civil and criminal matters, for the government and often for the private sector, the GA provides the lab analysis.

The Magistrate and High Court judges all felt that the GA generally had done good work, but is currently overworked. There has been a big increase in the number of drug cases and this has backlogged

the Government Analyst's reports.[15] It now takes up to four years to receive a report from that office, particularly for courts located outside of Colombo, where there are no GA regional field offices.

Court Reform: Incentives Against Change

Added together the above constraints serve to provide some understanding of the dynamics of court delay and backlog. Indeed, one would think that some of the constraints might be easily overcome, such as the move to continuous trials and the adoption of a modern, computerized record system. However, upon further examination, there are other forces at play which would suggest otherwise. In particular a range of institutional incentives frequently are in place which work against readily available reforms.

A good example of these forces is visible in the appeals process. The Court of Appeal exercises an appellate jurisdiction for the correction of all errors, in fact or in law, committed by any of the courts of first instance. Unfortunately, it has not worked in such a manner. The Court of Appeal has been backlogged for a number of years. The attorneys know that it takes up to five years[16] to finish an appeal. Thus, many attorneys now make appeals in every case, even frivolous cases. This buys the attorney's client up to five years of freedom from having to deal with the judgement of the lower court. With attorneys flooding the Court with appeals, the Court is unable to clear out its backlogged cases. It is forced instead to continuously to deal with more and more new cases.

In brief, the condition of delay and backlog has served to spawn the use of delay as a tactic for lawyers to defer cases. A similar condition prevails with respect to non-continuous trials. Some observers indicated that judges would resist moving to continuous trials because it would entail longer hours on the bench. Some judges interviewed however, indicated that they did not want to adopt continuous trials because of the hardship in taking people away from their employment for long appearances in court.

Whatever credence one might give or not give to the above explanations, it is clear that lawyers may have a vested interest in perpetuating non-continuous trials. Lawyers are paid on a fee-for-appearance basis, rather than a flat fee for a case. Thus, they have an obvious interest in non-continuous trials. For

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[15] In drug cases, the delay prevents the court from taking any action at all and can leave a defendant stranded in jail.

[16] Some lawyers and judges estimate that it is closer to ten years than to five.

example, seniors lawyers load up on many cases, actually more than they can handle, thereby assuring that they have a substantial fee-for-appearance income.

The second actor who may have a vested interest in not only preserving non-continuous trials, but also in perpetuating the existing archaic record system, are the court staff. These conditions offer a source of income generation for some of them. Many of those interviewed, including judges and court staff, agreed that there is corruption in the offices of the Registrar, Fiscals and Clerks. It is not clear if corruption is a minor or more pervasive feature of court administration. Some of those interviewed indicated that it was not rampant throughout the court staff.

From interviews it was learned that a range of court officials engage in rent-seeking practices. In the case of fiscals, some attorneys and parties bribe them to make extra efforts to deliver summons and executions to the opposing party, or they pay the bribes so the fiscal will "lose" the summons or execution to be delivered to the party making the bribe. According to some interviewed, it is now such a broad practice that many court documents are "lost" and thus undelivered. Attorneys interviewed felt trapped into bribing clerks because the competition was doing so. Winning by any means necessary in order to not perish at a competitor's hand, had become the motto of these attorneys.

Several judges the team interviewed admitted that they had caught several of their employees accepting bribes. The proper course of action, according to a high level government source, is to turn the employee into the Bribery Commission. Only one judge interviewed claimed he had taken this course of action. Some judges had court employees transferred to another court instead of reporting them to the Commission. The judges all said that once an employee is labeled as corrupt, that employee is transferred every six months so that he or she never gets a strong enough foot-hold in the new court. One judge proudly announced that he had transferred half of his staff to the North and East regions of the island.

Two court employees agreed to have an interview with the team. They did not provide names, and the team was not told in which court they worked. Both employees admitted that attorneys often "tip" them to pull documents, misplace files, and to get tasks done more quickly or slowly depending on the needs of the attorneys. The clerks felt that this was their due since they were paid so much lower than almost anyone.

In summary, the current system of non-continuous trials and "poor" record-keeping increases the number of possible transactions per case, which represents a multitude of rent-seeking opportunities for court staff. For many lawyers it represents a means for influencing court schedules and judgements in their favor. In this

context, any effort by inside or outside reformers to streamline and expedite court administration can run up against an organizational culture, and the institutional incentives inherent therein, which in many instances is weighted in favor of perpetuating lax and imprecise judicial practices.

University Reform: Law as an Agent of Change

Beginning in the mid 1980s, TAF began focussing attention on improving law education in Sri Lanka. There are three institutions of higher learning that include law as a field of training. The University of Colombo (UC) and the Open University each have a faculty of law which provides a four year undergraduate degree in law. The Sri Lanka Law College also provides a three year undergraduate degree in law. In each instance, once having completed their course work, students must pass a bar examination in order to be professionally certified to engage in the practice of law. Together, the three law faculties enroll approximately 2700 students.

Much of the law training at the three institutions has been highly theoretical, with little emphasis on critical analysis, practical applications, or exposure to actual issues of law and development in the Sri Lanka context, and with almost all of the educational process focussed on law subjects with no instruction in the behavioral sciences. To rectify this condition, TAF has been working on a number of fronts in order to bring greater intellectual vitality and relevance to the educational process.

First, TAF is financing an ambitious project of supporting Sri Lanka scholars in the writing of textbooks in 15 subject areas, featuring the use of Sri Lankan case law materials. The current absence of such textbooks, requires that law faculty use lectures and rote learning as the primary medium of instruction.

Second, TAF has assisted the law faculty at the University of Colombo in reforming the curricula, with a particular emphasis on modernizing courses in commercial law and comparative constitutional law, and introducing new courses in human rights law and environmental law.

Third, in order to provide a more applied and participatory educational experience, where students can begin to understand the relevance of the law to larger issues social and economic change, TAF has supported the establishment of the Legal Aid Clinic at the Open University which sponsors legal literacy workshops and the provision of free legal aid to low income individuals.

The activities of the Clinic are integrated into the educational process by requiring that all fourth year law students associate with the Clinic and follow from beginning to end a particular legal aid case which the Clinic is pursuing by itself or through referral

to practicing attorneys. At the end of the fourth year the student is required to submit a paper analyzing the dynamics and outcome of the litigation process.

As a counterpart to the Open Un. Legal Aid Clinic, the Legal Aid Centre at the Un. of Colombo was established in 1991. The Centre is designed to bring greater awareness "of the links between law and the larger community." Unlike the Un. of Colombo Clinic, the Centre does not provide legal aid, but rather organizes studies and workshops which seek to make students aware of legal and human rights issues among poor and disadvantaged groups within Sri Lankan society.

Much of the Centre's activities have focussed on involving law students in studies of the law and its relationship to larger social and political issues, such as women and violence, the rights of displaced persons (of which there are over one million in Sri Lanka), and juvenile offenders. The Centre also organizes moot competitions on subjects such as public interest law, democracy and individual rights.

Aside from the stimulus of TAF/A.I.D. assistance to the educational reforms described above, a major question arises concerning the source of the impetus behind the changes underway at these two law faculties. In part, it comes from faculty, particularly those who have had an opportunity for overseas training and observations, and who have come to realize that current methods of instruction and course content are in need of reform. Many of these faculty are inspired by a vision where the law faculty becomes more than simply a teaching institution, but rather assumes a more activist role, with faculty and students learning to adapt and apply the law in a manner which addresses major social issues.

The impetus for change is also coming from students themselves, who realize that the curricula is in need of reform in order to make it more relevant to current social realities. Thus, students have generally been supportive of the course changes sponsored by more innovative faculty members.

What has been the impact of the changes underway at these two universities? Impact can measured at two levels, one with respect to the kind of institutional orientation the law faculties manifest concerning the relation of law to society, and second, with respect to changes in student concepts of the educational process and the kinds of values which a law student incorporates into his or her professional identity.

In the case of the two law faculties the emerging paradigm being championed by faculty leadership is that of one where law and the law faculty itself becomes an institution of reform for social and economic advancement, particularly for those large, and frequently majority segments of society who suffer from some form of

impoverishment or injustice, and are without access to legal services. In turn, it is assumed that within such an educational environment, where the practice of law is manifested as a tool for change, students will adopt career/professional orientations which reflect an activist approach to legal change.

The activities of the Legal Aid Clinic at the Open University embody an approach to law and society which places a premium on legal activism and advocacy on behalf of low-income people, with particular attention focussed on women's rights. Aside from providing free legal aid at the campus clinic, students and faculty conduct one day clinics in outlying rural areas, where legal literacy presentations and counseling are offered. This more proactive approach also includes a weekly presentation on national television of discussions and docu-dramas on legal issues.

The leadership of the Open Un. Law Faculty also views the role of the faculty as one of representing and advocating the interests of the legally disadvantaged in public policy forums. Thus, the faculty has been active in lobbying judicial officials on behalf of children and women's rights. The research undertaken by the faculty indicated that the courts were excessively lenient in dismissing many cases involving the abuse of children and women. This condition was brought to the attention of judges in a workshop organized by the faculty. The judges admitted that they were too lenient, but that they were under pressure from above to reduce the backlog of cases and that dismissing many of the abuse cases was one tactic of showing that they were expediting their caseload.

The Legal Aid Centre at the Un. of Colombo is beginning to establish a track record of research, workshops and publications on major issues of law and social change. Its most recently completed research effort involved a two year study of women and domestic violence (De Silva and Jayawardena 1993). The study focussed on the widespread incidence of domestic violence against women and the cultural barriers which keep the issue from gaining public attention, and the corresponding lack of adequate support and legal services in protecting women. The research included the compilation of individual cases of domestic violence gathered from student interviews of women resident in slum areas in Colombo, with some cases also from more middle class households. The reporting of these cases is followed by analysis and recommendations for reforming laws and making services available for women who are victims of domestic violence.

How are students responding to the changes which are underway at the Open Un. and Colombo Un. Law faculties. As mentioned earlier they have been supportive of these changes. The research on women in violence sponsored by the UC Legal Aid Centre was undertaken by fifteen students on a volunteer basis, above and beyond their normal work, and with no extra credit. Similarly, in 1992, 25 of the UC law students worked together with a group of law students

from other South Asian countries in a symposium on legal education, which produced a final publication, under the imprimatur of the UC Legal Aid Centre, proposing major revisions in curricula and teaching methods designed for educating lawyers to become "social engineers" (Gunawardhana, et. al. 1993).

The concept of the lawyer as social engineer reflects much of what the innovative instructors in both law faculties are seeking to introduce in the curricula and constitutes the rationale as well for the establishment of the two legal aid centers. A social engineering perspective implies that th lawyer serves at the forefront of wielding "the law to facilitate and influence positive social change," and in particular for redressing major social and economic injustices.

In brief, the two university law programs are beginning to adopt more progressive and activist practices of law training. The Open University is in the lead, both with respect to the vision of its leadership and the current course requirement that exposes students to the harsher realities of disadvantaged and low income people in need of legal aid.[17]

Summary

It should be emphasized that providing a broader and more relevant educational experience during the preentry period of undergraduate preparation at the two university law faculties and the College of Law is extremely important. This is because post-entry training in the form of **required attendance at** workshops for mid-career lawyers and judges, which would bring a more social science perspective to understanding such subjects, as child abuse, domestic violence, drug and alcohol abuse, prostitution, and the social and economic pressures experienced by low income households is not generally available. Neither the Sri Lanka Bar nor the Judges Training Institute offer courses in these areas, and where workshops on these subjects are offered from other sources, where attendance is voluntary, judges and lawyers frequently are not in attendance.

Can the current TAF and A.I.D. support of the training programs sponsored by the Bar and law faculties serve to improve judicial performance? Training alone probably will not serve this purpose. A focus group interview with law students, a usual source of idealism and change, highlighted the shortcoming of training as the only reed to lean on in generating reform. The students indicated

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[17]Little has been mentioned concerning the Sri Lanka Law College largely because it faces some major structural constraints in adopting the kinds of innovations which are now featured at the two university faculties. The leadership of the College recognizes the need for major changes in the curricula but has yet to find a means of translating that into practice.

that if they reported on a corrupt clerk, the other clerks would retaliate through such measures as losing their case records, giving confidential information to their opponents, etc. The other consequence of reporting on clerks and fiscals is that young attorneys would be blackballed by senior attorneys for being "trouble-makers." In other words, it would be professional suicide to report corruption.

Despite the disincentives cited by students in voicing their concerns for reform, they still support more idealistic standards in judging the performance of the judicial system. This source of energy coupled with the results of the questionnaire (analyzed in Chapter II) administered at the Bar workshops for practicing lawyers indicates there is a base of support in the law profession from which debate could be generated about what needs to be on a legal reform agenda.

VI. OVERVIEW SUMMARY

Several themes emerge from an analysis of the Sri Lanka case which inform strategic thinking about reform of a legal system. Discussion of these themes has to be couched within the limitations of a team whose visit was only of one month in duration. In an effort to demonstrate its utility to the policy-makers, the impulse of applied social science frequently is to press beyond the limits and let the reach for conclusions exceed the grasp which the evidence would warrant from one case study. Nevertheless, if one should not generalize on the basis of one country study, there is license to speculate about broader issues manifested in the Sri Lanka case.

First, in many societies at a similar level of development with Sri Lanka, there may be civic capacities at the local level which can lend a hand in resolving disputes, providing legal assistance and pushing for reforms in the larger legal system. ADR has capitalized on a reservoir of volunteerism in staffing mediation councils, which are male dominated. This suggests that the same might be done with women who could be mobilized to assist their many sisters who frequently are in desperate need of legal help because of domestic violence and abandonment. Certainly, the recent upsurge of protest and pressure among rural women in India demanding that the government close local liquor outlets is a sign that social resources for change do exist, but frequently remain dormant and untapped.

A second issue concerns the problem of access to legal services. The majority of the population in the Third World simply do not

have the financial means to avail themselves of legal help. This is particularly the case for women who in addition to lacking financial resources may fear abuse in any encounter with police or the judicial system in general. Legal aid services are in meager supply. To the credit of the Sri Lanka Government the new mediation program is meeting some of these needs. Much more innovation could be done at little financial cost in the provision of legal services, including perhaps the adoption of user fees.

Third, the lack of much innovation reflects the fact that legal reform is not a high priority on the agenda of many of the political elite. Moving it higher on the agenda would seem to depend on pressures and demands emanating from reformist constituencies and coalitions. As demonstrated in Sri Lanka this may be easier said than done. The commercial sector is not inclined in this direction; some members of the Bar are, but as an organization it has yet to demonstrate a collective will to assume such a role; the media operates under severe strictures, and the NGO community is weak and fragmented.

In brief, constituency based demand for reform has yet to demonstrate much impact in Sri Lanka; a condition which reflects the prevailing culture of dthe society and has been reinforced by the deterioration of civil society over the last decade, which itself is an outgrowth of civil strife and attendant government controls to retain its authority and power. A.I.D. and TAF recognize these conditions and are investing in revitalizing civil society. Assistance is being provided to the NGO sector, with a particular emphasis on enhancing skills in advocacy for reforms in public-policy.

Fourth, the above comments suggest that Sri Lanka bears characteristics which are found in many developing countries; communal strife and a weakened civil society. Most importantly modern institutional forms coexist with and are heavily penetrated by patrimonial structures. The crafting of vertical relationships through clientelism, patronage and personal contacts are a primary means of acquiring power and exercising influence. This explains why constituencies built around horizontal relationships, involving group or class interests, are difficult to form and effectively express their common concerns, as exemplified by the personalistic manner in which many in the Sri Lankan commercial sector represent their interests before the government.

Fifth, with constituencies limited in their capacity as source of reformist pressure, the focus of attention shifts to assessing the prospects for cultivating elite coalitions as a source of pressure for reform. This strategy is being supported by TAF and A.I.D. as represented in their assistance in establishing a public policy institute at the Un. of Colombia. The reforms which are being undertaken by the law schools, the bar association, and with ADR, are all based on elite initiatives which have been supported and

cultivated through TAF and A.I.D. assistance. These Sri Lankans are dedicated to making reforms succeed and some are passionate visionaries in working on behalf of a better and more just social order.

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